



DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124, 126, and 129

[Public Notice: 11434]

International Traffic in Arms Regulations: U.S. Munitions List Categories;

Preliminary Injunction Vacated by a Federal Court of Appeals

AGENCY: Department of State.

ACTION: Notification of vacatur of a prior preliminary injunction.

SUMMARY: The U.S. Department of State (the Department) is issuing this document to inform the public of the vacatur of a preliminary injunction previously ordered by a federal district court on March 6, 2020. As a result of the vacatur, the Department's previously issued final rule of January 23, 2020, goes into full effect. Therefore, software and technical data related to 3-D printing of firearms or components transferred to the Export Administration Regulations (EAR), administered by the Department of Commerce now is exclusively controlled by the EAR.

DATES: The court order vacating the preliminary injunction took effect May 26, 2021.

FOR FURTHER INFORMATION CONTACT: For technical questions only: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2809; email DDTCPublicComments@state.gov.

SUPPLEMENTARY INFORMATION: On January 23, 2020, the Department published a final rule in the *Federal Register* at 85 FR 3819 (RIN 1400-AE30) that amended the International Traffic in Arms Regulations (ITAR) to revise Categories I, II, and III of the U.S. Munitions List (USML) and remove certain items that no longer warrant control. On the same date, the Department of Commerce published a companion final rule in the Federal Register at 85 FR 4136 (RIN 0694-AF47) that made conforming changes to the Export Administration Regulations (EAR) to control the export of certain

commodities, software, and technology removed from the USML. These final rules were set to be effective March 9, 2020.

On March 6, 2020, in response to a lawsuit filed by several U.S. States, the U.S. District Court for the Western District of Washington (Civil Action No. 2:20-cv-00111), issued an order preliminarily enjoining part of the Department's final rule. More specifically, the order enjoined the Department "from implementing or enforcing the regulation entitled International Traffic in Arms Regulation: U.S. Munitions List Categories I, II, and III, 85 FR 3819 (Jan. 23, 2020) insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearm and firearm parts using a 3D-printer or similar equipment." As the text of the order explained, and as was similarly described in a document published on April 2, 2020 at 85 FR 18445, the court's order required the Department to maintain certain technical data controls in the USML related to producing 3-D printed firearms or firearm parts; however, other parts of the subject final rule were allowed to go into effect, including the removal of certain tangible firearms from the USML, which the Department of Commerce then began to regulate for export under its EAR.

However, on May 26, 2021, the U.S. Court of Appeals for the Ninth Circuit issued its mandate in *Washington v. U.S. Dep't of State*, No. 20-35391, 2021 WL 1621320, 2021 U.S. App. LEXIS 12448 (9th Cir. Apr. 27, 2021), vacating the preliminary injunction previously entered by the U.S. District Court for the Western District of Washington on March 6, 2020.

As a result, the remainder of the Department's subject final rule at 85 FR 3819 has now gone into effect. The Department therefore no longer regulates the export of certain kinds of technical data as described in its previous *Federal Register* document of April 2, 2020 at 85 FR 18445. Now, the EAR, administered by the Department of Commerce, exclusively controls the export of all commodities, software, and technology

described in its final rule at 85 FR 4136 on January 23, 2020. For questions about that rule, please contact the Department of Commerce's Bureau of Industry and Security or visit its website at <https://www.bis.doc.gov/>.

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